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M.S., Appellant)	
)	
and)	Docket No. 21-1251
)	Issued: March 8, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Inglewood, CA, Employer)	
)	

Case Submitted on the Record

² 5 U.S.C. § 8101 *et seq.*

her burden of proof to establish continuing disability or residuals on or after January 13, 2020 due to her accepted employment injury.

FACTUAL HISTORY

On September 25, 1995 appellant, then a 27-year-old part-time flexible letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral heel pain causally related to factors of her federal employment, including casing mail and walking. OWCP accepted the claim for bilateral plantar fibromatosis and a right calcaneal spur. It paid appellant wage-intermittent wage-loss compensation for periods of total and partial disability.

By decision dated August 15, 2012, OWCP reduced appellant's wage-loss compensation, effective that date, based on its finding that she had the capacity to earn wages in the selected position of receptionist.

In a report dated March 26, 2014, Dr. Joseph M. Page, an orthopedic surgeon, advised that he was treating appellant for bilateral plantar fasciitis and planovalgus feet. On examination he found ligamentous laxity and pain over the plantar fascia. Dr. Page recommended new shoes and noted that appellant had a collapsed arch. He instructed her to return as needed.

On April 19, 2019 OWCP referred appellant to Dr. Richard A. Rogachefsky, a Board-certified orthopedic surgeon, for a second opinion examination. In the accompanying statement of accepted facts (SOAF), it advised that appellant had an episode of bilateral plantar fasciitis walking on her route and that it had accepted her claim for plantar fibromatosis and calcaneal spur.

In a report dated May 2, 2019, Dr. Rogachefsky discussed appellant's history of injury and provided his review of the evidence of record. On examination he found intact sensation and full strength of the right foot and ankle, mild tenderness of the right heel, negative varus and valgus stress tests, and a negative anterior drawer test of the right ankle. Dr. Rogachefsky further found intact sensation and full strength with mild tenderness to palpation of the left foot and plantar heel, but no swelling, erythema, or ecchymosis. He found a mild pes planus deformity of the bilateral feet. Dr. Rogachefsky diagnosed bilateral plantar fibromatosis and calcaneal spurs. He indicated that appellant had objective findings of a "well-healed scar in the right heel and very mild pes planus deformity on the right and left feet. Subjective findings are mild pain and tenderness in the right and left plantar heel regions." Dr. Rogachefsky opined that the accepted employment-related condition had resolved, noting that appellant had "minimal tenderness to palpation, minimal discomfort, and minimal subjective complaints and objective findings." He found that she required no further medical treatment and could return to her usual employment as a letter carrier without restrictions.

On December 9, 2019 OWCP notified appellant of its proposed termination of her compensation as the weight of the evidence established that she no longer had any employment-related disability or residuals due to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

By decision dated January 13, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Rogachefsky's opinion

represented the weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

In a report dated October 28, 2020, Dr. John B. Dorsey, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and noted that she had last worked for the employing establishment in 2010. He discussed her complaints of bilateral foot pain with numbness and tingling radiating into the right lower leg and left ankle. On examination Dr. Dorsey found bilateral pes planus deformity or flat feet, worse on the right. He found tenderness to palpation bilaterally from the bottom of the foot to the heels and noted that appellant had gait difficulty because of pain. Dr. Dorsey further found hypersensitivity to pinprick and touch on the right heel. He noted that x-rays from 2010 revealed bilateral heel spurs and a hallux valgus deformity. Dr. Dorsey diagnosed bilateral plantar fibromatosis and a right calcaneal spur. He requested that OWCP expand the acceptance of the claim to include neuropathy of the medial calcaneus nerve and anxiety and depression as a consequential injury. Dr. Dorsey indicated that appellant received medication from a psychiatrist, but had not received treatment for her physical symptoms in four years. He opined that her employment-related conditions had not resolved. Dr. Dorsey related:

“Over and above that, [appellant] continues to have anxiety and depression related to the pain in her medial heel, which is a hypersensitivity/neuropathy, which continues to the present time. There is evidence of hypersensitivity from the posteromedial heel to the medial malleolus to pinprick and touch as well as pes planus of both feet, right worse than left. [Appellant] continues to have an unusual gait (a steppage/neuropathic gait without true foot drop) in which she tries to avoid striking her heels, and she has a great deal of difficulty trying to squat due to pain in her heels and in her posterior plantar feet.”

Dr. Dorsey recommended continued treatment. He found that appellant was disabled from her usual employment, but could work as a clerk.

On December 9, 2020 appellant requested reconsideration.

By decision dated March 4, 2021, OWCP denied modification of its January 13, 2020 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

³ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective January 13, 2020, as she no longer had disability or residuals causally related to her accepted employment injury.

The Board finds that OWCP properly accorded the weight of the evidence to Dr. Rogachefsky, who provided a second opinion examination on May 2, 2019. Dr. Rogachefsky discussed appellant's history of injury and provided examination findings showing no loss of sensation or strength and findings of mild tenderness to palpation in the feet and a bilateral mild pes planus deformity. He diagnosed bilateral plantar fibromatosis and calcaneal spur. Dr. Rogachefsky asserted that appellant had no residuals of the accepted employment injury based on the minimal examination findings. He opined that she could resume her regular employment duties without restrictions and required no further medical treatment.

Dr. Rogachefsky based his opinion on a proper factual and medical history and findings on physical examination. He provided medical rationale for his opinion by explaining that the minimal findings on examination failed to support continued residuals or disability due to the accepted employment conditions.⁸ Moreover, there is no contemporaneous medical evidence demonstrating continued disability or residuals. The Board, therefore, finds that OWCP properly relied upon the reports of Dr. Rogachefsky in terminating appellant's wage-loss compensation and medical benefits.⁹

LEGAL PRECEDENT -- ISSUE 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.¹⁰ To establish causal relationship between the condition as well as any

⁴ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁵ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁶ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁷ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁸ *See E.J.*, *supra* note 6.

⁹ *See L.S.*, Docket No. 20-1204 (issued October 4, 2021); *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

¹⁰ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.¹¹

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹² This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision.

Subsequent to the termination of appellant's compensation, appellant submitted a report dated October 28, 2020 from Dr. Dorsey. Dr. Dorsey reviewed the history of injury and her complaints of bilateral foot pain and numbness. He found a ples planus deformity bilaterally and hypersensitivity to pinprick on the right heel. Dr. Dorsey diagnosed bilateral plantar fibromatosis and a right calcaneal spur. He further diagnosed as related to the accepted employment injury neuropathy of the medial calcaneus nerve and anxiety and depression as a consequential injury. Dr. Dorsey found that appellant had objective findings of a neuropathic gait and hypersensitivity in the medial heel. He opined that she was disabled from her usual employment, but could work as a clerk. Dr. Dorsey advised that appellant required further medical treatment.

Dr. Rogachefsky, the second opinion examiner, found that appellant had no residuals of her left shoulder condition. Both Dr. Dorsey and Dr. Rogachefsky provided rationale for their respective opinions based on their review of the medical evidence and findings on examination. The Board, therefore, finds that a conflict in medical opinion exists regarding whether appellant has established continuing employment-related disability or residuals on or after January 13, 2020.¹⁴

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of a second opinion physician, OWCP shall appoint a third physician to make an examination.¹⁵ The Board will, thus, remand the case for OWCP to refer appellant to an impartial medical specialist, pursuant to 5 U.S.C. § 8123(a), to determine whether she has met her burden of proof to establish continuing employment-related disability or residuals on or after January 13, 2020 due to her accepted employment injury. The specialist should further address whether the acceptance of appellant's claim should be expanded to include any additional conditions. Additionally, on remand OWCP shall update the SOAF to clarify that

¹¹ *Id.*

¹² 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹³ 20 C.F.R. § 10.321.

¹⁴ *See B.C.*, Docket No. 16-0978 (issued November 21, 2016).

¹⁵ 5 U.S.C. § 8123(a); *G.K.*, Docket No. 16-1119 (issued March 16, 2018).

it has accepted a calcaneal spur on the right side instead of bilaterally. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective January 13, 2020, as she no longer had disability or residuals causally related to her accepted employment injury. The Board further finds that the case is not in posture for decision on the issue of whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after January 13, 2020 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 8, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board